

A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, April 27, 2006

 Back

Public Hearings and Possible Actions RECOMMENDATION FOR COUNCIL ACTION

ITEM NO: 50

Subject: Conduct a public hearing and consider action on an appeal by Dale Bulla, Vice-President, 2222 Coalition of Neighborhood Associations, Inc. (2222 CONA), of the Zoning and Platting Commission's decision to approve an extension of a released site plan, under LDC 25-5-63 (C), Champion Commercial SPC-05-0012A, located at 6015 N. Capitol of Texas Highway.

Additional Backup Material

(click to open)

- ☐ [042706BCAtxt_CPH-Appeal-ChampionCommercial](#)
- ☐ [Overview](#)
- ☐ [ZAP Backup](#)
- ☐ [ZAP Backup - Extended Phasing](#)
- ☐ [Letter to ZAP](#)
- ☐ [Appeal](#)
- ☐ [CONA backup](#)



GRAVES DOUGHERTY HEARON & MOODY
A PROFESSIONAL CORPORATION

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MAILING ADDRESS:
P.O. Box 98
Austin, TX 78767

October 28, 2005

Via Regular Mail and E-mail
Ms. Betty Baker
Chair, Zoning and Platting Commission
City of Austin
P.O. Box 1088
Austin, Texas 78701

RE: Request for (i) Phasing of Site Plan and (ii) Extended Expiration of the Site Plan to Five (5) and Ten (10) Years After the Site Plan is Approved -
Champion Commercial Development (the "Project"), 6015 N. Capital of Texas Highway, Austin, Travis County, Texas; Case Number SPC-05-0012A.

Dear Chair Baker:

In conjunction with the submittal of the Site Plan, SPC-05-0012A, (the "Site Plan") for the Project, the Applicant has filed a request for phasing of the Site Plan and also seeks an extended expiration of the Site Plan, pursuant to Section 25-5-21 of the City of Austin Land Development Code (the "Code").

At this time, we request: (i) approval of phasing of the Site Plan for the Project; and (ii) approval of commencement of the first phase of the development to not later than five (5) years, and the commencement of the last phase of the development to not later than ten (10) years, after approval of the site plan by the Zoning and Platting Commission. The Project includes two commercial buildings with different potential users. The Site Plan is phased to allow the development to respond to market conditions over different periods of time.

In addition to accommodating the timing of the Project to market conditions, there are many practical reasons for extending the expiration date. First, the property is subject to a Compromise Settlement Agreement between the City of Austin and the Champion Family dated June 27, 1996, which fixes the regulations applicable to the Project. Thus, the applicable regulations for this property will not change in the future - even if the Site Plan expires. Therefore, no reason exists to require prematurely the re-submission of a new plan that would be identical to (and subject to the same regulations as) this Site Plan.

Second, as you and other Commissioners are well aware, the process to prepare a Site Plan requires time and money. If another Site Plan has to be sought, both the City and Champion family will incur unnecessary expenditures of time and expense. Under the circumstances, we believe that it is reasonable and fair to approve an extended expiration of the phasing of the Site Plan of five (5) and ten (10) years, especially since the regulations applicable to the Project are fixed.

October 28, 2005
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If you have any questions or need additional information regarding this request, please do not hesitate to contact me at 480-5734.

Very truly yours,



Michael J. Whelan

MJW/kla

cc: Ms. Josie Ellen Champion
Ms. Alma Juanita Champion Meier
Ms. Mary Margaret Champion Roberson
Mr. Joe Pantalion, Director (via e-mail)
Ms. Tammie Williamson (via e-mail)
Ms. Kathy Haught (via e-mail)



City of Austin Watershed Protection and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SPC-05-0012A

DATE APPEAL FILED January 30, 2006

PROJECT NAME Champion Commercial
Development

YOUR NAME Dale Bulla

SIGNATURE Dale Bulla

YOUR ADDRESS 7202 Foxtree Cove

PROJECT ADDRESS 6015 N. Capital Of Texas

Austin, TX 78750

Hwy., Bull Creek Watershed

YOUR PHONE NO. (512) 345-9528 WORK

APPLICANT'S NAME Champion Assets, Ltd.

(512) 345-9528 HOME

(Josie Champion)

CITY CONTACT Kathy Haught

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☐ I am the applicant or agent representing the applicant
- ☒ I communicated my interest by speaking at the Planning Commission public hearing on (date) 1/17/06.
- ☐ I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED* (Check one)

- | | |
|---|------------------------------------|
| <input type="checkbox"/> Administrative Disapproval/Interpretation of a Site Plan | Date of Decision: _____ |
| <input type="checkbox"/> Replacement site plan | Date of Decision: _____ |
| <input checked="" type="checkbox"/> Planning Commission Approval/Disapproval of a Site Plan | Date of Decision: <u>1/17/2006</u> |
| <input type="checkbox"/> Waiver or Extension | Date of Decision: _____ |
| <input type="checkbox"/> Planned Unit Development (PUD) Revision | Date of Decision: _____ |
| <input type="checkbox"/> Other: _____ | Date of Decision: _____ |

*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

See attached statement.

(Attach additional page if necessary.)

Applicable Code Section:

LDC 25-5-21, LDC 25-5-41, LDC 25-5-81

2222CONA requests that ZAP deny the requests for phased development with an extension of time to develop Tract 4, on the grounds that:

1. Questions regarding the legality of the 1996 CSA have not yet been resolved.
2. The TIA conducted for the Champions in 1998 did *not* consider this development on Tract 4 and has *not* been updated with current traffic conditions and assumptions. The plan for phased development for this tract does *not* provide solutions to mediate the traffic problems, as required by Section 25-5-21 of the Land Development Code.
3. The Champions have repeatedly complained that they are being punished for the traffic problems because they are "last in line" to develop, yet they do not act in good faith to develop their property.
4. Phasing the development on this 9-acre tract is not logical with the shared water quality controls and parking, and will exacerbate the disruption to the surrounding FM2222 and Loop 360 roadways and neighborhoods.
5. With the request of this extension the Champions are just delaying the posting of fiscal security while preserving their Special Exemptions and ability to modify the minimal, incomplete site plan that has been submitted.
6. Extending the expiration dates for this Site Plan gives unfair advantage to the Champions as they wait to see what other developers might do. "Allowing the development to respond to market conditions" is *not* a reasonable need for the requested phasing and extension.
7. The Champions have been in violation of their TCEQ Conditional Permit relating to cleanup of lead shot on Tract 1 since at least summer 2005. Lead shot is accumulating in Bull Creek, the watershed in which Tract 4 also is located.

Dear Council:

2222 CONA requests reversal by the City Council of the Zoning and Planning Commission (ZAP) decision on January 17, 2006 to allow phasing and extension of the Site Plan for Champion Tract 4 (SPC-05-0012A). This case requested and received approval to phase the development and extend the deadlines for five (5) and ten (10) years on the two phases. Although there was public comment and conflicting information provided by the applicant and public during the 17 January 2006 hearing, the Commission had no discussion of the issues and provided no reasoning for its approval of this request. This case deserves a review by City Council.

This property is subject to a Special Exception Ordinance No 960613-J granting it special development rights to develop the property subject to the 1984 Lake Austin Watershed Ordinance instead of current development restrictions. The period of this special exemption is 10 years, beginning in 1996. The applicant has chosen to not develop this property in this 10 year period, and now wants the special exemptions to be extended for another five (5) and ten (10) years.

The applicant has no right to this prolonged extension and there are no compelling reasons why this special exemption should be extended. The applicant had ten years since 1996 to develop the tract under obsolete regulations which threaten health and public safety. Development under the 1984 Lake Austin Watershed Ordinance threatens Bull Creek, which is adjacent to this tract and which contributes to Austin's municipal water supply. The City should not in any way facilitate the development of this tract under obsolete regulations.

Please do not continue to extend the benefits and special exceptions that the Champions have been granted by suing the City of Austin. The City Charter requires the City to act in the best interests for the health and safety of the public, and the City must insist that developers comply with the codes and ordinances that are enacted to do just that. Please review the request that was approved by the ZAP on 17 January 2006 and DENY the request to extend the expiration dates for the Site Plan for Champion Tract 4 SPC-05-0012A. The partial Site Plan has not even received final approval and it is inappropriate to extend the deadline at this time.

The attached Background Material provides additional information.

Respectfully,



Dale Bulla
Vice-President, 2222 CONA
Director, Jester Estates Board of Directors
7202 Foxtree Cove
Austin, TX 78760

Background Material

On 9 December 1993 the City Council passed Ordinance No. 831208-H, declaring that "...an emergency exists concerning the safe, orderly, and healthful growth of the City." It required that the Ordinance be effective immediately upon its passage as required by the emergency and as provided by the City Charter "To assure the immediate preservation of the public peace, health, and safety...". This Ordinance was an emergency measure to protect the Bull Creek and West Bull Creek Watersheds, which contribute to our suburban drinking water supply.

On 13 June 1996 the City passed Special Exception Ordinance No 860613-J which granted special exceptions to the Champion tracts that were affected by the 1996 ordinance, allowing them to instead develop the property under the 1984 Lake Austin Watershed Ordinance if they took advantage of this special exception by commencing the development within 10 years. Failure to take advantage of the special exception benefits within the specified times required that the development be governed by the current code in effect at the time the development application is filed.

During many requests to rezone their property for more intense land use the Champion interests claim they are being punished for the traffic problems because they are "last in line" to develop, yet they do not act in good faith to develop their property. The Site Plan for this Tract 4 is just now undergoing approval and has been divided into two "parts" to avoid providing all the required details while technically meeting the terms of the Compromise Settlement Agreement enacted by Ordinance 860613-J by filing a Site Plan before June 2006. The Site Plan for this tract would not expire according to the standard Land Development Code process until sometime in 2008 (depending on final approval date). Why is it in the best interests of the City and the public to grant another extension at this time, extending the special exception benefits through 2016, and allowing this property to be developed under watershed protection rules that will then be more than 30 years old? The City declared an emergency in 1993 to improve the water quality controls for the health and safety of the public and it is no less important in 2006.

The TIA conducted for the Champions in 1998 did not consider this development on Tract 4 and has not been updated with current traffic conditions and assumptions. The plan for phased development for this tract does not provide solutions to mediate the traffic problems, as required by Section 25-6-21 of the LDC, and the 1998 TIA data and assumptions will only become more obsolete and the traffic issues more severe as time goes by. (The 1998 TIA for Tracts 1 and 2 is based on conditions that existed eight years ago and an assumption that the development of Tracts 1 and 2 would be completed by 2003, all of which is now completely obsolete.)

The applicant stated in the Request for Phasing and Extended Expiration that the reason to phase and extend the development is to "allow the development to respond to market conditions over different periods of time." The Site Plan reflects delaying one building with 8,100 SF Retail located in the middle of the parking lot to Phase 2 of the development. With Retail zoning the applicant already has much flexibility in responding to market conditions with the mix of retail, and the phasing of this small parcel of the property will only exacerbate the disruption to the surrounding FM2222 and Loop 360 roadways and neighborhoods with ongoing construction activities.

In requests for more intense zoning the applicant justifies that "market forces" are driving them to dense land use, yet they are asking for an inordinate amount of time to execute on a Site Plan so they can "respond to market conditions over different periods of time." These "market forces" are nebulous and do not justify a reasonable need.